

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE NORTHERN DISTRICT OF ILLINOIS  
WESTERN DIVISION

3 LDGP, LLC, et al., ) Docket No. 15 C 50148  
4 Plaintiffs, )  
5 v. ) Rockford, Illinois  
6 CYNOSURE, INC., ) Thursday, January 25, 2018  
7 Defendant. ) 10:00 o'clock a.m.  
 )  
 )

8 TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE IAIN D. JOHNSTON

## APPEARANCES:

10 For the Plaintiffs: POWER, ROGERS & SMITH  
11 (70 W. Madison Street,  
12 Suite 5500 Chicago, IL 60602) by  
MR. DEVON C. BRUCE

13 WILLIAMS McCARTHY  
14 (120 W. State Street,  
15 P.O. Box 219,  
Rockford, IL 61105-0219) by  
MR. MARC C. GRAVINO

16 For the Defendant: SMITH AMUNDSEN LLC  
17 (150 N. Michigan Avenue,  
18 Suite 3300  
Chicago, IL 60601) by  
MS. KATHRYN V. LONG

20 ARNOLD & PORTER KAYE SCHOLER  
(601 Massachusetts Avenue NW,  
Washington, DC 20001) by  
21 MR. DANIEL S. PARISER

22 (70 West Madison Street,  
23 Suite 4200,  
Chicago, IL 60602) by  
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25 (250 West 55th Street,  
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MR. KYLE D. GOOCH

1      Court Reporter:

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1                   THE CLERK: Calling 15 CV 50148, LDGP, LLC vs.  
2 Cynosure, Inc.

3                   MR. BRUCE: Your Honor, it looks like they brought  
4 the Army.

5                   MR. PARISER: Not the whole Army, your Honor.

6                   MR. BRUCE: Well, Washington, Chicago. I think there  
7 are more lawyers on the other side of this case than are at my  
8 firm.

9                   THE COURT: Oh, stop it. I know your firm, and your  
10 firm has got plenty of lawyers.

11                  All right. Let's get appearances.

12                  MR. BRUCE: Good morning, your Honor. Devon,  
13 D-e-v-o-n, Bruce on behalf of the Plaintiff.

14                  THE COURT: Good morning, Mr. Bruce.

15                  MR. GRAVINO: Good morning, your Honor. Marc Gravino  
16 on behalf of the Plaintiff.

17                  THE COURT: Good morning, Mr. Gravino.

18                  MR. PARISER: Good morning, your Honor. Daniel  
19 Pariser, with Arnold & Porter Kaye Scholer, for the Defendant.  
20 It is a pleasure to be in front of your Honor.

21                  THE COURT: Good morning.

22                  Hold on one second. Where did you go? Oh, there you  
23 are. Okay.

24                  MS. LONG: Good morning, your Honor. Kate Long from  
25 Smith Amundsen for the Defendant.

1                   THE COURT: Good morning, Ms. Long.

2                   MS. DILLINGHAM: Good morning, your Honor. Emily  
3 Dillingham, from Arnold & Porter Kaye Scholer, for the  
4 Defendant.

5                   THE COURT: Good morning.

6                   MR. GOOCH: Good morning, your Honor. Kyle Gooch,  
7 from Arnold & Porter Kaye Scholer, for the Defendant.

8                   THE COURT: Good morning.

9                   So, Ms. Long, are you guys totally stepping out at  
10 this point?

11                  MS. LONG: No, we are going to maintain our  
12 appearance in this case and provide support for Arnold &  
13 Porter as needed. So we will be around.

14                  THE COURT: All right. I mean, I know you have  
15 institutional knowledge of the case.

16                  MS. LONG: Exactly.

17                  THE COURT: And I would hate to see that walk out the  
18 door.

19                  Okay. So Judge Kapala entered an order. The  
20 last -- too many things on my desk here. Hold on one second.

21                  So we have got a 2015 case that's before Judge  
22 Kapala. I need to know where we are going with this thing. I  
23 know there was the attempted settlement conference that  
24 probably didn't even -- it didn't even get off the ground.

25                  MR. BRUCE: It didn't get off the ground, your Honor.

1 And if I can circumvent, I have talked to Mr. Pariser, and we  
2 have worked out a CMC order, as you, I believe, directed or  
3 suggested the last time.

4 THE COURT: Okay.

5 MR. BRUCE: But before we get to that, Mr. Pariser  
6 indicated to me that based upon Judge Kapala's ruling that  
7 just came down, a mere flesh wound, he, Mr. Pariser, indicated  
8 that he would be filing additional motions. And we got in a  
9 big discussion, and I said, "Well, I don't know if I'm going  
10 to need discovery, I don't know which," and we both came to  
11 the conclusion maybe -- and this is a joint suggestion; we are  
12 not bickering about this one, Judge -- maybe Mr. Pariser and  
13 the Army could file their motions, and I could take a look at  
14 those, and then that might judge whether I need to do  
15 discovery or to what extent.

16 That makes sense to me, Judge, because I could be an  
17 obstructionist and say I object, but to my knowledge, I can't  
18 object to the man filing a motion. So I was just going to say  
19 if we can get a time period in which he can file a motion, and  
20 then we can come back shortly thereafter and see what my  
21 response to that motion is.

22 THE COURT: Okay. Mr. Pariser, go ahead.

23 MR. PARISER: Yes, your Honor. I mean, the ruling  
24 that Judge Kapala entered with respect to personal  
25 jurisdiction, in our view, was really a game changer in this

1 case. The court dismissed all of the class representatives  
2 that resided out of state based on lack of personal  
3 jurisdiction. So all we are left with is one in-state  
4 Illinois class representative, and essentially our position is  
5 going to be that really ends this as a nationwide class action  
6 because there is, likewise, no jurisdiction over absent class  
7 members who reside out of state, and there is going to be  
8 insufficient sales in Illinois to even maintain a statewide  
9 class.

10 So we think that's a big-picture issue, a threshold  
11 issue that the judge can resolve, I think, fairly quickly and  
12 expeditiously, and as discussed with Mr. Bruce, our thought  
13 was to get those motions on file and see what happens before  
14 we proceed with further discovery because, obviously, it is  
15 going to significantly impact the scope of the case,  
16 proportionality issues and the like, and obviously mindful of  
17 the court wanting to move the case and totally understand  
18 that, but that was our thought and suggestion, your Honor.

19 THE COURT: See, we went down the class certification  
20 road and hit a wall, and then we came back, and it happens.  
21 We try to figure out if we can do bifurcated discovery on  
22 class certification, and I'm not a big fan of it. I didn't  
23 like it when I was an attorney, and I really don't like it  
24 sitting here, and it didn't work out.

25 So then we brought everybody back and said, okay,

1     everything is open, we are going to go with full discovery.  
2     So they don't even have -- I don't have -- well, I have the  
3     docket sheet. I can rummage through it pretty quickly. Do  
4     you even have a class cert motion pending?

5                    MR. BRUCE: Yes.

6                    THE COURT: Okay. I entered and continued that.

7                    MR. BRUCE: Yes. Plaintiff's lawyer files it  
8     simultaneously, Judge.

9                    THE COURT: Well, the Seventh Circuit kept messing  
10    around with pick off and no pick off.

11                  MR. BRUCE: No pick-off defense.

12                  THE COURT: So I get it. I get it.

13                  MR. PARISER: Your Honor, if I may?

14                  THE COURT: Hold on.

15                  So we have got a class cert motion pending. What you  
16    are saying, what it sounds like you are articulating, sounds  
17    like a response in opposition to class cert, not a standalone  
18    motion. I could be wrong, but talk to me about that.

19                  MR. PARISER: Yes, so it is a little different, your  
20    Honor. I think we would probably frame it as a motion to  
21    strike the class allegations for lack of jurisdiction or  
22    perhaps a motion for partial summary judgment, but the idea is  
23    this is a simple issue that you don't need to go through  
24    expert discovery, have class certification experts, have  
25    a full-blown class determination to decide. It is really it

1 follows from the judge's recent order on personal  
2 jurisdiction. So the notion is it would shortcut those  
3 proceedings.

4 Now, I fully understand, your Honor, obviously, this  
5 is a 2015 case, you want to move the case, and that's why  
6 Plaintiff's counsel and I did agree on a proposed case  
7 management order in the event that the court wanted to keep  
8 the discovery train moving while this motion is being decided.  
9 You know, we have that as a backup, but we just thought that  
10 it made sense to try to flesh out in a prompt manner what the  
11 scope of this case looks like before we dive into further  
12 discovery and depositions and the like.

13 But obviously, your Honor, that's your decision, and  
14 if the court wishes to proceed with discovery, we have worked  
15 out a schedule.

16 THE COURT: Well, the schedule can go sideways pretty  
17 quick depending on what you file, and you haven't filed it yet  
18 and haven't written it yet, and I haven't seen it yet.

19 MR. BRUCE: I guess our position, Judge, is I didn't  
20 realize -- I thought we were going to be talking about the CMC  
21 when Mr. Pariser and I talked the other day, and then he  
22 indicated this, and, frankly, I would like to see what he has  
23 got and see where he is going because that will affect running  
24 around the country taking a ton of deps or it is a more narrow  
25 issue. I don't know. I'm kind of shooting in the dark, but I

1 would like to see what he is going to file.

2 THE COURT: Me, too.

3 All right. How much time would you like to get that  
4 motion on file?

5 MR. PARISER: Could we get two weeks, your Honor?

6 THE COURT: Well, I will ruin a weekend for you. I  
7 will give you February 12th.

8 MR. PARISER: Thank you, your Honor.

9 THE COURT: All right. So get that on file by  
10 February 12th.

11 And then I'm going to give Plaintiff's counsel an  
12 opportunity to take a look at it and think about what would be  
13 needed. And then I'm going to try to find some time, which is  
14 going to be the real problem here, to talk to you.

15 I will give you until the 13th. I won't do the 14th  
16 because that's Valentine's Day, and I don't want to be working  
17 late on Valentine's Day. And I will set this for a telephonic  
18 status February 22nd at 1:30, if it works.

19 Mr. Gravino, Mr. Bruce, that's a Thursday, 1:30 p.m.  
20 Central Time, for a telephonic. Does that work?

21 MR. BRUCE: Yes, that's great. Thank you, Judge.

22 THE COURT: Does that work for Defendant?

23 MR. PARISER: Yes, your Honor.

24 THE COURT: Okay. So then you will have a little  
25 over a week to take a look at it. I will have some time to

1 take a look at it. And then we will see what we need to do,  
2 whether there is going to be additional discovery to respond  
3 to it. Then that becomes a problem because the motion becomes  
4 stale, and it is a Judge Kapala case, and he is going to say,  
5 "Why is there a motion pending in my Biden list on a 2015  
6 case?" And then I have to come up with a great answer, and  
7 I'm just plumb out of great answers right now.

8 So we will talk on the 22nd at 1:30. Provide  
9 Ms. Pedroza with your contact information so we can place the  
10 call.

11 I will let new defense counsel know -- I'm going to  
12 give you the speech. They can probably do the speech as well  
13 as I can at this point.

14 Once on the case management order, if we go that  
15 route, what you need to know is once I set the dates, we are  
16 going to meet those dates, and I'm going to do what's  
17 necessary to get you to those dates.

18 So if you serve a third-party subpoena and the return  
19 date comes and goes, call them up, send them an e-mail. If  
20 they still don't respond, hit them with a motion, file it in  
21 front of me as soon as possible, give them a copy of the  
22 motion, and I will get you the documents that you are entitled  
23 to get or make sure somebody sits at a deposition that should  
24 be sitting at a deposition.

25 If you have discovery disputes, file your motion,

1 after you had a Rule 37 conference. Try to work them out on  
2 your own. If you can't, get that motion either for a  
3 protective order, motion to compel in front of me so, again, I  
4 can keep you on track to meet the dates. If you haven't  
5 picked up on it yet, I think I said "meet the dates" three  
6 times.

7 If at any time the parties want a settlement  
8 conference, let me know either at a status or collectively  
9 contact Ms. Pedroza, and I will find some time to get you in  
10 here for a settlement conference. If you don't want to use  
11 me, and that's fine, we have a whole list of attorneys on the  
12 panel. They will be glad to hear your mediation. And the  
13 downside is you pay for them.

14 Okay. So that's the drill. That's what we do here,  
15 we meet the dates. If you need to file a motion to compel or  
16 motion for a protective order, I don't care, that's fine.  
17 That's what I am here to rule on. My job is to get the case  
18 moving forward. So I'm not going to be a hindrance.

19 I'm almost positive we have a protective order in  
20 place because we have had a couple issues on that. So that  
21 shouldn't be a problem, okay?

22 All right. We will talk to you on the 22nd, then.

23 MR. BRUCE: Thank you, Judge.

24 MR. GRAVINO: Thank you, Judge.

25 MR. PARISER: Thank you.

1 MS. LONG: Thank you, your Honor.

2 (Which were all the proceedings heard.)

3 CERTIFICATE

4 I certify that the foregoing is a correct transcript from  
5 the record of proceedings in the above-entitled matter.

6 /s/ *Heather M. Perkins-Reiva* February 19, 2018

7 \_\_\_\_\_ Date  
8 Heather M. Perkins-Reiva  
Official Court Reporter

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